

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
NORFOLK DIVISION**

**KATHLEEN KITTERMAN, ANNA CRONIN,  
CORRIE BALL, MARVIN BALL,  
MARGARET BROGAN and EVAN JONES,**

**Plaintiffs,**

**v.**

**Case No. 2:12cv146**

**CLAUDIO TOVAR-GUZMAN,  
FORTINO GARCIA AND SONS HARVESTING, INC.  
and KUZZENS, INC.,**

**Defendants.**

**ANSWER TO AMENDED COMPLAINT**

Kuzzens, Inc. (“Kuzzens”), by counsel, for its answer to the amended complaint states as follows:

1. Kuzzens lacks knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 1 through 8 of the amended complaint.
2. Kuzzens admits the averments of paragraphs 9 and 10 of the amended complaint.
3. In response to the averments of paragraph 11, this defendant admits that it appears that the action is between citizens of different states and the amount claimed is in excess of \$75,000.00. This defendant denies that the Migrant and Seasonal Agricultural Worker Protection Act provides any basis for subject matter jurisdiction in this action.
4. This defendant lacks knowledge or information sufficient to form a belief as to the truth of the averments of paragraphs 12 and 13 of the amended complaint.
5. The averments of paragraph 14 of the amended complaint are denied.
6. The averments of paragraphs 15 and 16 are admitted.

7. Kuzzens lacks knowledge or information sufficient to form a belief as to the truth of the averments of paragraphs 17 through 25 of the amended complaint.

8. In response to the averments of paragraph 26, this defendant admits that the bus was owned and operated by Fortino Garcia, but lacks knowledge or information sufficient to form a belief as to the truth of the remaining averments.

9. This defendant admits that Kuzzens has hired migrant or seasonal agricultural workers transported to its farm by Fortino Garcia. It lacks knowledge or information sufficient to form a belief as to the truth of the remaining averments of paragraph 27.

10. This defendant denies the averment of paragraph 28 that Tovar-Guzman worked for it at the time of the incident. It lacks knowledge or information sufficient to form a belief as to Tovar-Guzman's intended destination.

11. The averments of paragraph 29 are denied.

12. This defendant lacks knowledge or information sufficient to form a belief as to the averments of paragraph 30.

13. The averments of paragraph 31 are admitted except that the averment that Kuzzens transports migrant or seasonal agricultural workers is denied, and except that whether this defendant is considered an agricultural employer under the Act is a conclusion of law to which no response is required.

14. This defendant lacks knowledge or information sufficient to form a belief as to the averments of paragraph 32.

15. The averments of paragraphs 33 through 51 are not directed to this defendant and require no response of this defendant,

16. In response to the averments of paragraph 52, this defendant adopts and incorporates its responses to paragraphs 1 through 51.

17. This defendant denies the averments of paragraph 53.

18. This defendant admits that it hired Fortino Garcia to transport workers to its farm on the Eastern Shore of Virginia as alleged in paragraph 54.

19. This defendant denies that Tovar-Guzman was employed by it at the time of the accident as alleged in paragraph 55.

20. This defendant denies the averments of paragraphs 56 through 58.

21. In response to paragraph 59, this defendant adopts and incorporates its responses to paragraphs 1 through 58.

22. Paragraph 60 appears to attempt to state a conclusion of law to which no response is required.

23. In response to paragraph 61, this defendant denies that Tovar-Guzman was employed by it.

24. In response to paragraph 62, this defendant avers that the Migrant and Seasonal Agricultural Worker Protection Act is inapplicable to plaintiffs' claims. Paragraph 62 appears to attempt to state a conclusion of law to which no response is required.

25. The averments of paragraph 63 appear to statement a conclusion of law to which no response is required.

26. This defendant denies the averments of paragraphs 64 through 66.

27. All averments of the amended complaint not specifically admitted are hereby denied.

## Defenses

1. The Court lacks personal jurisdiction over this defendant.
2. The amended complaint fails to state a claim for relief which can be granted.
3. Defendant Tovar-Guzman was not an employee of this defendant at the time of the accident, and this defendant is not liable under the theory of *respondeat superior* for Tovar-Guzman's negligence.
4. This defendant did not violate the provisions of the Migrant and Seasonal Agricultural Worker Protection Act as alleged.
5. This defendant will rely upon any and all other defenses which are supported by the law and the evidence and which become known to it up to and including the time of trial.

/s/

---

James E. Brydges, Jr., Esquire  
Virginia State Bar No. 4420  
Brian N. Casey, Esquire  
Virginia State Bar No. 26710  
Attorneys for Kuzzens, Inc.  
TAYLOR WALKER, P.C.  
Post Office Box 3490  
Norfolk, Virginia 23514-3490  
(757) 625-7300  
(757) 625-1504 (fax)  
[jbrydges@taylorwalkerlaw.com](mailto:jbrydges@taylorwalkerlaw.com)  
[bcasey@taylorwalkerlaw.com](mailto:bcasey@taylorwalkerlaw.com)

CERTIFICATE OF SERVICE

I hereby certify that on the 9<sup>th</sup> day of November, 2012, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

Patrick Brogan, Esquire  
Virginia State Bar No. 25568  
Bryan K. Meals, Esquire  
Virginia State Bar No. 40184  
Attorneys for Kathleen Kitterman, Anna Cronin, Corrie Ball,  
Marvin Ball, Margaret Brogan and Evan Jones  
DAVEY & BROGAN, P.C.  
101 Granby Street, Suite 300  
Norfolk, Virginia 23514-3188  
(757) 622-0100  
(757) 622-4924 (fax)  
[pbrogan@daveybroganpc.com](mailto:pbrogan@daveybroganpc.com)  
[bmeals@daveybroganpc.com](mailto:bmeals@daveybroganpc.com)

James R. Jebo, Esquire  
Virginia State Bar No. 48418  
Michael E. Harman, Esquire  
Virginia State Bar No. 16813  
Lynne J. Blain, Esquire  
Virginia State Bar No. 23719  
Attorneys for Claudio Tovar-Guzman and  
Fortino Garcia and Sons Harvesting, Inc.  
HARMAN, CLAYTOR, CORRIGAN & WELLMAN  
Post Office Box 70280  
Richmond, Virginia 23255  
(804) 747-5200  
(804) 747-6085 (fax)  
[jjiebo@hccw.com](mailto:jjiebo@hccw.com)  
[mharman@hccw.com](mailto:mharman@hccw.com)  
[lblain@hccw.com](mailto:lblain@hccw.com)

/s/

---

James E. Brydges, Jr., Esquire

Virginia State Bar No. 4420

Brian N. Casey, Esquire

Virginia State Bar No. 26710

Attorneys for Kuzzens, Inc.

TAYLOR WALKER, P.C.

Post Office Box 3490

Norfolk, Virginia 23514-3490

(757) 625-7300

(757) 625-1504 (fax)

[jbrydges@taylorwalkerlaw.com](mailto:jbrydges@taylorwalkerlaw.com)

[bcasey@taylorwalkerlaw.com](mailto:bcasey@taylorwalkerlaw.com)